assignee was also mistaken if he supposed the Act of Congress to preclude him absolutely, under all circumstances, from allowing an exemption beyond the value of $500 in the whole. Whether this bankrupt ought to have received more than has been allowed I have no certain means of deciding from what is now before me. This must be determined by the assignee, whose report, if the bankrupt persists in his claim, will be made hereafter through the Register.

District Court of the United States, Northern District of New York. In Bankruptcy.

IN RE WELLS AND SON.[1]

A general assignment for the benefit of all his creditors, by an insolvent debtor, prior to the 1st of June 1867, is not necessarily fraudulent nor for the purpose of delaying or hindering creditors, and, therefore, not necessarily an act of bankruptcy.

Section 39 of the Bankrupt Act, in enumerating among acts of bankruptcy the fraudulent stopping of payment of his commercial paper by a banker, merchant, &c., embraces two cases:—

1. A *fraudulent* stoppage, which is *per se* an act of bankruptcy, for which proceedings may be immediately commenced; and

2. A stoppage not fraudulent, but which becomes an act of bankruptcy by continuing for fourteen days.

THE petition in this case alleges two acts of bankruptcy, viz.: First, That on or about the 10th of March, 1867, the said Alfred L. Wells & Son, being possessed of a certain estate and property (to wit, a stock of dry goods and other articles, together with divers accounts against persons to whom they had sold goods, &c.), made an assignment of the whole of them, *with intent to delay and hinder their creditors;* and Second, That on or about the 16th of March, 1867, being merchants and traders, they fraudulently stopped and suspended, and had not resumed payment of their commercial paper within a period of fourteen days.

The petition also shows that at the time above mentioned the firm was insolvent; that judgments had been taken against them, and the suits upon other demands against them had been commenced, and were being prosecuted to judgment and execution.

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[1] We are indebted for this case to The Gazette.—EDS. AM. LAW REG.

The opinion of the court was delivered by

HALL, Dist. J.—The execution of a general assignment for the common and equal benefit of all their creditors is admitted; but it is denied that it was executed with the intent to delay or hinder creditors. As there is no replication to the answer containing this denial, and as the case has been brought to a hearing on the petition and answer, this intent, if it be not conclusively presumed as a matter of law, must be regarded as disproved; and as there is no allegation that the assignment referred to was made with intent to defeat or delay the operation of the Bankrupt Act, we are not now called upon to decide whether a general assignment making a disposition of the bankrupt's property substantially the same as that contemplated by the Bankrupt Act, can be considered an act of bankruptcy, if made in good faith before the first day of June last, and consequently before any petition could be filed under the act and for the single purpose of preventing a portion of his creditors from obtaining a preference over his other creditors.

We think there is no conclusive legal presumption that the assignment was made to delay or hinder creditors. It may, perhaps, be truly said it was made with intent to delay and hinder the particular creditors who were striving to obtain a preference over the other creditors of the respondents, by pressing the suits they had already commenced to judgment and execution; but this intent is not such an intent as the Bankrupt Act contemplates. Such an assignment, under such circumstances, and with such intent, would not be held void under the statute of this state, which avoids conveyances made with the intent to delay, hinder, or defraud creditors, and notwithstanding the provision of the 35th section of the Bankrupt Act, that a sale, assignment, transfer, or conveyance not made in the usual course of business of the debtor, shall be *primâ facie* evidence of fraud, we are of the opinion that, *under the denials contained in the answer* in this case, we cannot properly hold that the making of the assignment, under the circumstances stated, was an act of bankruptcy.

Upon the second allegation of an act of bankruptcy, the petitioners are entitled to an adjudication in bankruptcy against the respondents. It is true that the construction of the provision of the Bankrupt Act on which this allegation is based, is not entirely free from doubt, but the construction which justifies such an

adjudication has been adopted in another district, and is, as we think, a reasonable and just construction of such provision. It was contended upon the argument that this provision, which authorizes proceedings *in invitum* against any person "who, being a banker, merchant, or trader, has fraudulently stopped or suspended, and not resumed payment of his commercial paper within a period of fourteen days," does not authorize such proceedings, unless the original stoppage or suspension of payment was fraudulent—no matter how long such suspension may be continued.

We understand that the United States District Court of South Carolina has decided that such is not the true construction of the provision referred to, and that its true construction requires an adjudication in bankruptcy against a banker, merchant, or trader "who has suspended and not resumed payment of his commercial paper within a period of fourteen days," although such suspension or stoppage of payment was not fraudulent; and this, we think, is the fair and proper construction. The provision embraces the two cases; the one of an original fraudulent stoppage of payment, in which proceedings may be instituted at once, and the other of a suspension of payment, not fraudulent and not *per se* an act of bankruptcy, but which, if continued for more than fourteen days, becomes an act of bankruptcy by its continuance.

This construction of the language of this particular provision under consideration is, we think, best calculated to carry out the general intentions of Congress, as expressed in the Bankrupt Act, and such construction, if not strictly required by, is certainly not inconsistent with the language of the particular provision alluded to.

It can hardly be supposed that Congress intended that the creditors of a banker, merchant, or trader, who had *fraudulently* stopped payment of his commercial paper, should be compelled to allow him fourteen days to consummate his fraudulent purposes, and perhaps secretly remove from the United States with the mass of his property before they could take proceedings against him. There is certainly no more reason for allowing such delay after a fraudulent act of that character than there is in a case where a bankrupt has fraudulently concealed or transferred a portion of his property. But when the suspension of payment is from necessity, *and without fraud*, the period of fourteen days is

properly allowed the honest trader, that he may, in case he is solvent, and is only temporarily embarrassed, take the necessary measures to enable him to pay his dishonored paper, and prevent his business being broken up by proceedings in bankruptcy. The accidental loss or miscarriage of expected remittances; the unexpected failure of a correspondent, or of a bank in which his deposits are kept; the failure of his debtors to meet their commercial paper, or any other of the many misfortunes and accidents incident to commercial and financial operations, may compel an entirely solvent and perfectly safe merchant or trader to suspend for a day or two the payment of his commercial paper; but a merchant of fair character, who is solvent and deserving of credit, can, by means of temporary loans or otherwise, provide for resuming payment of his commercial paper within the fourteen days allowed by the Bankrupt Act. A suspension continued for a longer period may well be considered as evidence of hopeless insolvency, or of a want of adequate capacity to carry on his business, and as entitling his creditors to take proceedings to secure the application of his property to the payment of his debts. Between these two classes—between the honest trader who suspends payment by reason of misfortune or accident, and the fraudulent one who stops payment that he may retain and secure his means for the future benefit of himself or family, to the exclusion of his creditors—Congress has, we think, very properly made a clear distinction—a distinction which can only be acted on by adhering to the construction heretofore given to the provision referred to by the only District Court which has within our knowledge passed upon this question.

Supreme Court of Pennsylvania.

CURRY v. SCOTT, THE ERIE AND PITTSBURGH RAILROAD COMPANY ET AL.

The directors of the Erie and Pittsburgh Railroad Company had power to receive subscriptions for all the untaken stock, and to issue certificates therefor; and the moment this was done the holder became a stockholder, and entitled to a stockholder's rights.

The law authorizes no distinction between the rights of one stockholder and those of another. If one has not paid his subscription in full he is a debtor for